



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,931	09/25/2003	Naomi Kvaternik	2266.00	1277

7590 08/25/2004

Davis E. Herron II
PO Box 2778
Kansas City, KS 66110

EXAMINER

WILKENS, JANET MARIE

ART UNIT	PAPER NUMBER
----------	--------------

3637

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/670,931

Applicant(s)

KVATERNIK, NAOMI

Examiner

Janet M. Wilkens

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Although a second non-responsive action could have been issued for the amendment submitted June 7, 2004, in the interest of advance prosecution and considering the “special” status of this application, an action will be provided. First, when amending a claim, indicators such as “currently amended” and “previously amended” need to be used. Second, the claim 17 present in this amendment is not the claim 17 previously presented . Claims 18-20 were claims 17-19 previously and new claim 17 is newly presented. Note: claims cannot be renumbered during prosecution.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 17-20 have been renumbered 20 and 17-19, respectively.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 3637

Claim 20(17) is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Namely, it is unclear how the connector on the tray can be disconnected from the upper connecting bar by applying downward pressure on the ledge of the tray.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For claim 1, it is unclear whether or not the "first and second connecting bars" in line 10 are the same bars claimed previously. For claim 20(17), it is misdescriptive to state that the ledge has a downward pressure applied thereto in order to disconnect the connector from the bar. Furthermore, it is unclear which ledge is being referred to. For claim 17 (18), "the tray" lacks antecedent basis, since the structure itself has not been claimed previously. Note: the preamble sets forth a walker and tray combination. Then the body of the claim sets forth limitations of the walker. The tray itself is not being positively claimed before "the tray" limitation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-6, 10, 12, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson in view of Separa. Olson teaches a walker and tray combination (Fig 1) comprising: a first pair a legs (12 vertical members) connected via an upper and lower connecting bar (12 horizontal member, 15), a second pair a legs (12 vertical members) connected via an upper and lower connecting bar (12 horizontal member, 15), a strut (18) between the pairs of legs, and a tray (19) having biasable claw connectors (20) and a hinge on the lower surface thereof to attach the tray to the upper connecting bars when in a use position (Fig. 1) and adjacent and parallel one of the pairs of legs when in a non-use position (Fig. 2). For claims 1 and 10, Olson fails to teach the one edge/ledge of the tray is larger than the opposing edge/ledge. Separa teaches a tray wherein one edge/ledge is larger than its opposing edge/ledge (see Fig. 5). It would have been an obvious design consideration to one of ordinary skill in the art at the time of the invention to modify the combination of Olson by using an alternate tray thereon, i.e. one with different sized edges/ledges, such as is taught by Separa, for aesthetic reasons, for gripping purposes, etc. Note: since all of the features in the method claims are disclosed by Olson in view of Separa,

Art Unit: 3637

the method steps therein would inherently be met. Furthermore, see Fig. 1A of Olson wherein the edges/ledges are seen extending (though only slightly) passed the bars/legs.

For claims 6 and 16, Olson in view of Separa fails to teach that the tray is specifically made of polymethyl methacralate. The examiner takes Official Notice that polymethyl methacralate is well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use polymethyl methacralate for the tray of Olson in view of Separa, depending on the desired need of the person constructing the tray, e.g. material readily available, economic reasons, personnel preferences, strength properties desired/required, etc.

Claims 3, 7, 8, 11, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson in view of Separa and further in view of Cass (British reference 2,261,173). As stated above, Olson in view of Separa teaches the limitations of claims 1 and 10, including a walker having upper and lower bars between each of the leg pairs and a tray having biasable claw connectors (a pair) and a hinge on the lower surface thereof. For claims 3, 11, and 15, Olson in view of Separa fails to teach that the hinge connector is a removably mounted connector that is attachable to the opposing lower bar when the tray is in its non-use position. Cass teaches biasable connectors (68) on both ends a tray (66); the tray being attachable to a walker (10) in either a horizontal or vertical position using the connectors to accomplish both (see Figs. 1 and 2). First, it would have been obvious to one of ordinary skill in the art at the time of the invention to

Art Unit: 3637

modify the tray/walker combination of Olson in view of Separa by using an alternate connector on the tray, i.e. using biasable connectors on both sides (using pairs of connectors-a first and fourth connector on one side and a second and third connector on the opposite side) instead of the hinge/biasable connector combination used previously, to simplify construction of the combination (one less component required), to allow the tray to be easily removed from the walker, etc. Note: because of the connector/bar attachment, the biasable connectors of Olson would be capable of rotation around their respective upper bars (when the opposing connectors are detached). Second, when the tray is in its non-use position, it would have also been obvious to one of ordinary skill in the art at the time of the invention to attach the biasable connectors located adjacent the lower connector bar thereto, to better secure the tray to the walker during transport of the walker, etc. For claims 7, 8, 14 and 17-19, Olson in view of Separa fails to teach handle bars on each of the pairs of legs. Cass further teaches handle bars on each of its pairs of legs (see Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tray/walker combination of Olson in view of Separa by adding handle bars to each pair of legs, to provide a place for the user to put his/her hands while using the walker. Note: the handle bars would inherently prevent upward movement detachment of the tray.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson in view of Separa and Cass (British reference 2,261,173). Olson teaches a walker and tray combination (Fig 1) comprising: a first pair of legs (12

Art Unit: 3637

vertical members) connected via an upper and lower connecting bar (12 horizontal member, 15), a second pair a legs (12 vertical members) connected via an upper and lower connecting bar (12 horizontal member, 15), a strut (18) between the pairs of legs, and a tray (19) having biasable claw connectors (20) and a hinge on the lower surface thereof to attach the tray to the upper connecting bars when in a use position (Fig. 1) and adjacent and parallel one of the pairs of legs when in a non-use position (Fig. 2). First for claim 17, Olson fails to teach the one edge/ledge of the tray is larger than the opposing edge/ledge. Separa teaches a tray wherein on edge/ledge is larger than its opposing edge/ledge (see Fig. 5). It would have been an obvious design consideration to one of ordinary skill in the art at the time of the invention to modify the combination of Olson by using an alternate tray thereon, i.e. one with different sized edges/ledges, such as is taught by Separa, for aesthetic reasons, for gripping purposes, etc. Note: see Fig. 1A of Olson wherein the edges/ledges are seen extending (though only slightly) passed the bars/legs. Second, Olson in view of Separa fails to teach that the hinge connector is a removably mounted connector that is attachable to the opposing lower bar when the tray is in its non-use position. Cass teaches biasable connectors (68) on both ends a tray (66); the tray being attachable to a walker (10) in either a horizontal or vertical position using the connectors to accomplish both (see Figs. 1 and 2). First, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tray/walker combination of Olson in view of Separa by using an alternate connector on the tray, i.e. using biasable connectors on both sides

Art Unit: 3637

(using pairs of connectors-a first and fourth connector on one side and a second and third connector on the opposite side) instead of the hinge/biasable connector combination used previously, to simplify construction of the combination (one less component required), to allow the tray to be easily removed from the walker, etc. Note: because of the connector/bar attachment, the biasable connectors of Olson would be capable of rotation around their respective upper bars (when the opposing connectors are detached). Second, when the tray is in its non-use position, it would have also been obvious to one of ordinary skill in the art at the time of the invention to attach the biasable connectors located adjacent the lower connector bar thereto, to better secure the tray to the walker during transport of the walker, etc. For claims 7, 8, 14 and 17-19, Olson in view of Separa fails to teach handle bars on each of the pairs of legs. Cass further teaches handle bars on each of its pairs of legs (see Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tray/walker combination of Olson in view of Separa by adding handle bars to each pair of legs, to provide a place for the user to put his/her hands while using the walker. Note: the handle bars would inherently prevent upward movement detachment of the tray.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Please note: that the term "larger" can encompass the length, width or depth of the ledges and that the

Art Unit: 3637

claim language discussed in the interview is not in the claims as presently amended.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (703) 308-2204. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax

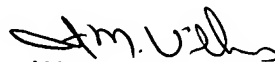
Art Unit: 3637

phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wilkens

April 13, 2004

90
8/18/04 August 16
JANET M. WILKENS
PRIMARY EXAMINER
Art Unit 3637